IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

FRIDAY, THE FOURTH DAY OF MARCH
TWO THOUSAND AND FIVE

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PRESENT

THE HON'BLE Mr.JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE Mr.JUSTICE C.V.RAMULU

W.A.Nos.1703 and 1802 of 2004

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WRIT APPEAL No. 1703 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 07/08/2004 in WP No.14376 OF 2002 on the file of the High Court.)

Between:

M.Ramakrishna, S/o M.Rangaiah,
R/o Mudigubba, Mudigubba Mandal, Anantapur

..... APPELLANT

AND

-

1 K.Sankarappa, S/o KSrinivasulu,
R/o Mudigubba, Anantapur District
2 G.Narayana, S/o Obulappa,
R/o Mudigubba, Anantapur District
3 The Commissioner Appeals, O/o The Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad
4 The Joint Collector, Anantapur District
5 The Mandal Revenue Officer, Mudigubba, Anantapur District
6 The Govt.of A.P., Revenue Department rep.by its Secretary,

Secretariat, Hyderabad

.....RESPONDENTS

Counsel for the Appellant: Mr. P.SREE RAMULU NAIDU

Counsel for Respondent Nos.1&2: Mr. P.VEERA REDDY

Counsel for Respondents 3 to 6 : G.P. FOR REVENUE

WRIT APPEAL No.1802 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 09/09/2002 in WP No.16577 OF 2002 on the file of the High Court.)

Between:

M.Ramakrishna, S/o.M.Rangaiah,
R/o Mudigubba, Mudigubba (Mandal), Anantapur.

..... APPELLANT

AND

-

1 Y.Ramakrishnamma, W/o.Late Y.Sankaranayana Reddy,
R/o.Gunjepalli, Mudigubba (Mandal),
Anantapur District.
2 The Commissioner Appeals, Office of the Chief Commissioner of Land

Administration, Andhra Pradesh, Hyderabad.
3 The Joint Collector, Anantapur District.
4 The Mandal Revenue officer, Mudigubba, Anantapur District.

.....RESPONDENTS

Counsel for the Appellant: Mr. P.SREE RAMULU NAIDU

Counsel for the Respondent No.1: Mr. P.VEERA REDDY

Counsel for Respondents 2 to 4 : G.P. for Revenue

The Court made the following :

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COMMON JUDGMENT: (Per **C.V. RAMULU,J**)

The appellant is a third party to the writ proceedings in W.P.Nos.14376 and 16577 of 2002. Respondents 1 and 2 in W.A.No.1703 of 2004 are petitioners in W.P.No.14376 of 2002, while the 1st respondent in W.A.No.1802 of 2004 is the petitioner in W.P.No.16577 of 2002. Writ Petitions were disposed of by separate orders dated 7-8-2002 and 9-9-2002 respectively. The subject matter of both the writ petitions is one and the same and the impugned orders are identical. The issue raised in both the writ appeals is also one and the same; therefore, they are being disposed of by this common Judgment.

The parties are hereinafter referred to as arrayed in the writ petitions.

At the outset, we may express our anguish as to the way in which the writ petitioners grabbed the lands without any entitlement to such allotment in the guise of invoking their power under Assignment Rules and instructions issued thereunder. They are the people, who initiated assignment proceedings and also allottees by themselves.

This is nothing but a fraud and abuse of power.

In order to consider the issue raised in these appeals, it may be necessary to notice few facts leading to filing of these appeals.

Petitioners in W.P.No.14376 of 2002 are working as Mandal Revenue Inspectors in the Mandal Revenue Offices of Mudigubba and Nallamada respectively. Petitioner in W.P.No.16577 of 2002 is the wife of one late Y.Sankaranarayana Reddy erstwhile Village Administrative Officer of Gunjepalli village. Petitioners in W.P.No.14376 of 2002 have stated that they do not own any house or house site at any place. Many Government employees were allotted Government land on payment of market value. Since they do not have any house or house site, applied to the Mandal Revenue Officer, Mudigubba for allotment of house site on payment of market value. The Mandal Revenue Officer having satisfied about their eligibility recommended to the Revenue Divisional Officer, Penugonda to fix the market value and the Revenue Divisional Officer by his Proceedings dated 25-6-1994 fixed the market value of the site at Rs.250/- per cent. They remitted the amount and the Mandal Revenue Officer assigned the land vide Proceedings R.Dis.16/1403, dated 18-7-1994 and also issued pattas to them. They were assigned an extent of Ac.0.2½ cts of land each in Sy.Nos.905/B12 and 905/B10 respectively. They were put in possession of the sites. While so, the then local MLA made a complaint on 20-9-1994 to the joint Collector, Anantapur District stating that house sites assigned to them are worth of Rs.1,00,000/- each. Basing on the said complaint, the Joint Collector called for report from the Mandal Revenue Officer and issued notice dated 10-6-1996 directing them to show cause as to why assignments should not be cancelled. They submitted explanation on 28-9-1996 and requested the Joint Collector to drop the proceedings.

It is the case of the petitioners in W.P.No.14376 of 2002 that without looking into the explanation, without giving personal opportunity to them and without proper enquiry, the Joint Collector passed orders in D.Dis.A8/8304/94, dated 23-2-1997 cancelling the assignments made in their favour. Aggrieved by this, they preferred appeal before the Commissioner of Appeals, Office of the Commissioner of Land Administration, Andhra Pradesh, Hyderabad. The Commissioner dismissed the appeals on 10-5-2000 without assigning any reasons. Therefore, they filed W.P.No.7527 of 2001 and this Court by an Order dated 16-5-2000 disposed of the

writ petition permitting them to avail the remedies i.e. Revision to the Government against the Orders of the Commissioner. Thereafter, they filed a revision, which was rejected by the Government through Memo No.68085/ASSN.IV(1)/2001-1, dated 21-2-2001 on the ground that it was time barred. Insofar as the petitioner in W.P.No.16577 of 2002 was concerned, the facts are similar, but the writ petition was filed directly against the Order passed by the Commissioner of Appeals in Proceedings dated 4-9-1998 on similar grounds.

Respondents in both the writ petitions have not filed their counters. The learned single Judge, after hearing both the parties, allowed the writ petitions holding that the orders passed by the Joint Collector do not indicate any reasons for cancellation of allotment. However, from the orders passed by the Commissioner of Appeals, it is evident that the reason for cancellation of assignment is that the amount, which was collected from the petitioner-assignees, does not reflect the prevailing market value. Thus, it was declared that the Joint Collector shall be entitled to collect the difference of prevailing market value as may be fixed by the jurisdictional Sub-Registrar or in accordance with the relevant provisions of law. Aggrieved by the said orders, the third party to the proceedings filed the present appeals.

It is the case of the appellant that the land allotted to the writ petitioner-assignees is a prime land in the midst of Mudigubba and is abutting the Panchayat Raj Road leading from Mudigubba to Dorigallu on the western side and located opposite to the newly constructed Police Station and at the back of the bus shelter and it is surrounded by dwelling houses on eastern and southern sides and on the northern side, there is Telephone Exchange. The assignees are not natives of Mudigubba village and the petitioners in W.P.No.14376 of 2002 and the husband of the petitioner in W.P.No.16577 of 202 were the employees of the Mandal Revenue Office, Mudigubba and they are not entitled for assignment of land. No notification has been issued before making assignments of land in question and the records would speak for themselves. The Gram Panchayat, Mudigubba was not consulted before making assignments. The sites are located nearer to Mandal Praja Parishad Office and are likely to be required for public purpose like construction of Government Offices etc. and are to be kept in POB for future public needs. Further, the assignment is also contrary to the Board Standing Orders and G.O.Ms.No.634, dated 2-7-1990, which is also relied upon by the writ petitioners. The entire proceedings are vitiated by fraud and misrepresentation.

Sri Subrahmanya Reddy, learned senior counsel appearing for the respondents-writ petitioners submitted that the petitioners in W.P.No.14376 of 2002 and the husband of the petitioner in W.P.No.16577 of 2002 were all Government employees, they are landless poor and they have no house or house sites of any kind anywhere. Since the Mandal Revenue Office had notified the lands, they have applied for and no objections were received. The case of the petitioners was considered sympathetically and were allotted with house sites. It is only at the behest of some disgruntled elements, a complaint was made and the Joint Collector took up the matter and cancelled the assignments without furnishing any reasons. The Commissioner of Appeals also did not give any reasons for rejection of the appeals. The writ petitioners are *bona fide* allottees and they never misrepresented before the authorities for the purpose of allotment of house sites. Even otherwise, the only dispute was as to the proper fixation of the market value of the land and nothing else.

During the course of hearing, we felt that the Joint Collector, Anantapur should file a counter affidavit in this regard, particularly as to the nature of the land and the nature of constructions made by the writ petitioners in the meanwhile. The learned Government Pleader filed counter affidavit and also produced the original record.

In the counter affidavit of the Joint Collector, it is stated that the land in question is classified as a village site as per the resettlement register at the time of assignment. After the assignment, the assignees have applied for construction permit from the Gram Panchayat, Mudigubba. Further, the Gram Panchayat granted permits for construction of building in favour of writ petitioners and others between 12-11-2002 and 11-10-2004. Accordingly, the assignees have commenced construction in their allotted plots as under:

1. Sri G.Narayana has laid the foundation in Sy.No.905B10 and raised the pillars upto roof level i.e. upto a height of 10 feet with RCC for the residential purpose.

2. Sri K.Sankarappa has laid the foundation in S.No.905.B12 and raised the pillars upto roof level i.e. upto a height of 10 feet with RCC for the residential purpose.

3. Smt Y.Ramakrishnamma has laid the foundation in Sy.No.905.B9 raised the pillars and laid the roof on the pillars with RCC for the residential purpose. All the above three constructions have been stopped as per the orders of the High Court of Andhra Pradesh, Hyderabad and

no further construction was made."

The Joint Collector, however, explained the location of the sites as noticed above. He stated that in view of the orders passed by the learned single Judge, they have implemented the same.

We have given our anxious consideration to the respective submissions made by the learned counsel and also gone through the original record produced by the learned Government Pleader.

It is interesting to note that, admittedly, the petitioners in W.P.No.14376 of 2002 and the husband of the petitioner in W.P.No.16577 of 2002 are not natives of Mudigubba village. They were serving the Revenue Department being posted in the Mandal Revenue Office. A notice (A1) purported to have been issued on 29-6-1994 by Y.Shanker Narayana Reddy, Village Administrative Officer of Gunjepalli of Mudigubba Mandal bringing it to the notice of the general public that (1) Y.Shanker Narayana Reddy (2) G.Narayana (3) K.K.Karunakaran and (4) K.Shankarappa had applied for allotment of house sites at Sy.Nos.905/B9, 905/B10, 905/B11, 905/B12 and invited objections, to be filed within 15 days. The signatory of this notice is no other than the husband of the petitioner in W.P.No.16577 of 2002. It is stated in the notice that the said notice was published by beat of tom tom in the village and the purported notice was also signed by the Executive Officer of the Gram Panchayat, Mudigubba. On the very same A1-Notice, on the back side, it was endorsed by the Mandal Revenue Inspector – first petitioner in W.P.No.14376 of 2002 stating "A1 notice published, no objections have been received" and underneath the same he signed and put the date as 17-7-1994. This itself would show that the very assignment proceedings were initiated by the interested parties and this would speak volumes of their intention to fraudulently knock away the sites. The notice was issued by Y.Shankernarayana Reddy and certified by K.Sankarappa stating that no objections have been received. As seen from the counter affidavit filed by the Collector that the lands are located in a prime place surrounded by Mandal Praja Parishad Office, Mandal Revenue Office, Bus Shelter, Police Station, Telephone Exchange etc., and/or abutting the main road leading from Mudigubba to Dorigallu. Further, the assignment deed dated 18-7-1994 made in favour of the petitioners would show that it was not an unconditional assignment. The very first condition

reads as under:

> "(1) That the assignment is liable to cancellation, if it be found that it was grossly inequitate or was made under a mistake of fact or owing to misrepresentation or fraud or in excess of the limits of authority delegated to the assigning officer by Board's Standing Order No.21 or that there was an irregularity in the procedure."

Once the assignment is conditional and it came to light that the assignees are all Government servants and are not natives of the same place and the lands are needed for future public purpose, the cancellation of the assignment of the Joint Collector was as per the terms of assignment deed. May be, the order of the Joint Collector does not furnish much reasons, but the order indicates that as per the reports of the Mandal Revenue Officer, Mudigubba, the Revenue Divisional Officer, Penugonda and the explanation submitted and on perusal of the records and material available, it was ordered to cancel the assignments on payment of market value made in favour of the petitioners and the lands were directed to be reserved for future public purpose duly including in the POB Register. However, the Commissioner in his Proceedings dated 16-5-2000 had examined the case in detail and noted as under:

> "Perused the records and considered the matter carefully. Records make it clear that the procedure is not followed in granting assignments like placing the matter before the assignment committee, obtaining remarks of the Gram Panchayat and examining the eligibility of the proposed assignees. Market value is fixed at Rs.250/- per cent treating the land as agricultural lands through it has much higher value as house sites.
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> The points raised by the appellants in defence of assignment are not relevant to the present issue, where assignment granted is obviously irregular and unsustainable."

In the very same order passed by the Commissioner of Appeal on 6-5-2000 it was also noticed that the

Revenue Divisional Officer, Penugonda gave a report stating that the assignment is irregular for the following reasons:

> "(1) market value is fixed taking into consideration sale of agricultural lands ignoring sales of house sites which actually took place in the vicinity of the assigned land. The value of the assigned land should have been fixed at least at Rs.4,800/- per cent, instead of Rs.250/- per cent.
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> (2) The eligibility of the applicants whether they own any house site

or house anywhere was not examined.

(3) The Gram Panchayat, Mudigubba was not consulted.

(4) Mudigubba is a Mandal Headquarters, and the sites located nearer to Mandal Praja Parishad Office and are likely to be required for construction of Govt.Offrice etc., and ought not to have been assigned. Therefore, the house site pattas assigned to the assigned to G.Narayana and 3 others may be cancelled and the extent covered by the house sites may be ordered to be kept in POB for future need for public purpose."

Therefore, it is not a simple case of fixing the market value improperly as contended by the learned counsel appearing for the writ petitioners-respondents. Learned Government Pleader supported the order passed by the Commissioner in confirming the cancellation of assignments made by the Revenue Divisional Officer. It is contended by Sri Subrahmanya Reddy, learned senior counsel for the writ petitioners that neither the writ petitioners misrepresented nor they played any fraud, they being landless poor and without any house site or house of their own, applied for assignment of the said lands on the notification issued by the Department and no objections were received in that regard. They are, in fact, entitled for such allotments as per G.O.Ms.No.634, dated 2-7-1990. May be, the Government servants are also entitled for allotment of house sites, if they are eligible. But, generally, the associations of Non-Gazetted Officers etc. request for allotment of lands for their members and such allotments were made. This is not one such assignment. This is an allotment of selective piece of land, which is located in the midst of well developed area abutting the main road and which is needed in future for locating the Government Offices etc.

The facts narrated above would reveal that the writ petitioners have taken up these proceedings on their own and initiated assignment proceedings, got the house sites allotted in their favour, which is nothing but abuse of power vested in them to have personal gain . This is also misuse of power in bad faith for alien and collateral purposes, which amounts to *mala fide* exercise of power. In this connection, it may be apt to extract the relevant portions of the decision of the Apex Court rendered in **EXPRESS NEWSPAPERS PVT.LTD. v. UNION OF INDIA**

"The impugned notices dated March 1,1980 and March 10,1980 were not issued *bona fide* in the ordinary course of official business for implementation of the law or for securing justice, but were actuated with an ulterior and extraneous purpose and thus were wholly *mala fide* and politically motivated. *Mala fides* on the part of the Government in power or

its functionaries would be sufficient to invalidate the impugned notices. Fraud on power vitiates the impugned orders as they were not exercised *bona fide* for the purpose for which the power was conferred.

Bad faith means intentional usurpation of power motivated by considerations that are incompatible with the discharge of public responsibility. The principle of *ultra vires* requires statutory powers to be exercised reasonably, in good faith, and on correct grounds. The Court assumes that Parliament cannot have intended to authorize unreasonable action, which is, therefore, *ultra vires* and void. The Court is concerned only with acts of legal power i.e., acts which, if valid, themselves produce legal consequence. The doctrine of *ultra vires* can cover virtually all situations where statutory power is exercised contrary to some legal principles. Where a public authority is held to have acted for improper motives or irrelevant considerations, or have failed to take account of relevant considerations, its action is *ultra vires* and void.

Fraud on power voids the order, if it is not exercised *bona fide* for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, by taking into account *bona fide,* and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order *ultra vires.* It would be a case of fraud on power. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister. A power is exercised maliciously, if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for 'alien' purpose other than the one for which the power is conferred is *mala fide* use of that power. Same is the position when an order is made for purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power. Exercise of power for collateral purpose has similarly been held to be a sufficient reason to strike down the action. It is not necessary that any named officer may be responsible for the act where the validity of action taken by a Government is challenged as *mala fide."*

We are of the considered opinion that the orders passed by the Collector, Anantapur as confirmed by the Commissioner of Appeal do not suffer from any infirmity or illegality and do not call for interference by this Court. Therefore, the orders impugned in these writ appeals are set aside and the official respondents are directed to take possession of the house sites in question.

However, it is submitted by the learned senior counsel appearing for writ petitioners-respondents that during the interregnum period from the date of disposal of the writ petitions and the status quo orders granted by this Court in the writ appeals, the writ petitioners have raised certain constructions on the land. Therefore, this Court may

have to consider the said position as admitted by the Joint Collector in his counter. It is curious to note that, in all, four employees of the Revenue Department were involved in this dubious method of getting the plots allotted/assigned in their favour. Out of that, one person, by name, K.K.Karunakaran did not challenge the order of the Collector, whereas the other three persons have filed writ petitions. But, we were told that even the fourth person (K.K. Karunakaran) was given permission to construct the house against whom the order of cancellation attained finality. We have examined the photographs filed as proof of constructions, which would show that the structures are being raised for commercial purpose and not for residential use. In fact, the area itself is not a residential area. We feel that the writ petitioner-assignees have committed fraud by misusing the official position held by them. Therefore, we do not want to take this submission into consideration for the purpose of equities.

Accordingly, the Writ Appeals are allowed with costs quantified at Rs.5,000/- each.

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B.Sudershan Reddy, J

04-3-2005

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C.V.Ramulu, J

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ASSISTANT REGISTRAR

To

1 The Secretary, Government of Andhra Pradesh, Revenue Department,

Secretariat, Hyderabad

2 The Commissioner Appeals, Office of the Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad
3 The Joint Collector, Anantapur District
4 The Mandal Revenue Officer, Mudigubba, Anantapur District
5 G.P. for Revenue, High Court Buildings, Hyderabad (OUT)

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